

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In re

Determination of Royalty Rates and Terms
for Making and Distributing
Phonorecords
(Phonorecords IV)

Docket No. 21-CRB-0001-PR
(2023–2027)

In re

Determination of Royalty Rates and Terms
for Making and Distributing
Phonorecords
(Phonorecords III)

Docket No. 16-CRB-0003-PR
(2018–2022) (Remand)

**GEORGE JOHNSON’S (“GEO”) MOTIONS TO INDEX SUBPART B
INTERACTIVE STREAMING RATES TO BLS CPI-U
INFLATION RATES IN BOTH PROCEEDINGS (2ND CORRECTED)**

Participant George Johnson (“GEO”), a *pro se* Appellant songwriter, respectfully submits these duplicate *Motions To Index Subpart B Interactive Streaming Rates to BLS CPI-U Inflation Rates in Both Proceedings* to the Copyright Royalty Board in the *Phonorecords III* (remand) and *Phonorecords IV* proceedings.

On December 16, 2021, GEO submitted two similar Notices¹ in both *Phonorecords III* (remand) and *Phonorecords IV* regarding the most recent United

¹ <https://app.crb.gov/document/download/25976> December 16, 2021, *George Johnson’s (“GEO”) Notice of Increased Monetary Inflation of 6.8% Percent CPI-U over Last Year by BLS*, submitted in *Phonorecords IV* (and also *Phonorecords III* <https://app.crb.gov/document/download/25982>).

States Bureau of Labor Statistics (“BLS”) monthly inflation data (CPI-U or All Items CPI for All Urban Consumers) which came in at 6.8% percent² over last year and *the largest increase since 1982*.

GEO files these Motions to formally propose and respectfully request that Your Honors index all Subpart B subscription *streaming* rates for national monetary inflation in both the *Phonorecords III* (remand) and *Phonorecords IV* rate proceedings.

GEO is requesting relief *exactly* like the CPI-U inflation adjustment the CRB determined in *Web V*.

The only difference or one exception might include a *retroactive* inflation adjustment to the Subpart B streaming rates.

GEO also understands from reading *Web V* that the CRB uses a “reasonable proxy”³ for a CPI adjustment. The CRB determined from SoundExchange’s economic analysis that the CPI-U was the most reasonable proxy and GEO respectfully proposes that Your Honors also choose the CPI-U as the standard for the *Phonorecords III* (remand) and/or *Phonorecords IV*.

“The Judges find a price level adjustment based on changes to the CPI-U to be supported by the testimony of economists who testified on behalf of SoundExchange and the Services. Moreover, the Judges find changes in the CPI-U to be a reasonable proxy for measuring changes in price levels in the relevant industries. 357”

² <https://www.bls.gov/news.release/pdf/cpi.pdf> December 10, 2021, press release from the United States Bureau of Labor Statistics which determined a 6.8% percent increase in CPI-U inflation over the previous 12 months.

³ <https://app.crb.gov/document/download/25678> July 22, 2021, [REDACTED] Final Determination of Rates and Terms 2021-2025 (Web V) - Page 300.

“Consequently, the Judges will set statutory rates for the year 2021 and index those rates for inflation over the remainder of the rate term using 2020 as the base year. Specifically, for the years 2022 through 2025, the rates shall be adjusted to reflect any inflation or deflation, as measured by changes in the Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) announced by BLS in November of the immediately preceding year, as described in the regulations set forth in this Determination.”

GEO agrees with all of the above and hopes it is applied to the *Phonorecords III* (remand) and/or *Phonorecords IV*.

One quick note — while the following footnote (357) may not apply here, as the CRB noted, under 17 U.S.C. § 805, Congress clearly “instructed” the “Judges to adjust those rates “to reflect nation monetary inflation during the additional period the rates remain in effect””. And while this applies only when “a voluntary settlement must be extended beyond the term of a settlement...”, 17 U.S.C. § 805 makes it clear that Congress *intended* for rates to reflect nation monetary inflation.

GEO also agrees with Your Honors “that national inflation rates are a reasonable proxy for price changes in the relevant industries”.

“(357) The Judges note that when rates in a voluntary settlement must be extended beyond the term of a settlement to cover the period of a statutory rate term, Congress has instructed the Judges to adjust those rates “to reflect national monetary inflation during the additional period the rates remain in effect.” 17 U.S.C. § 805. The Judges view this as support for the proposition that national inflation rates are a reasonable proxy for price changes in the relevant industries.”⁴

GEO also agrees with Your Honors’ *Web IV* finding located in footnote (356) on Page 300 of the *Web V* Determination, whereby streaming rates that are

⁴ <https://app.crb.gov/document/download/25678> July 22, 2021, [REDACTED] Final Determination of Rates and Terms 2021-2025 (Web V) - Page 300 footnotes 356 and 357.

adjusted based on the CPI-U “are clearly preferable to rates that are frozen arbitrarily for the duration of the five-year rate term.”

“(356) If the NAB had presented evidence of some other index that it demonstrated was more closely aligned with price changes in the music services, the Judges could have considered such an index as an alternative to the CPI-U. However, the NAB did not present such evidence, leaving the Judges with a choice between a five-year freeze on the statutory rates or an extension tied to a reasonable index. The Judges find that rates adjusted based on the CPI-U are clearly preferable to rates that are frozen arbitrarily for the duration of the five-year rate term.”

GEO agrees and commends the CRJ’s for this finding since its true and hopefully now *rate court precedent* to be applied to both *Phonorecords* proceedings.

A CPI-U inflation indexing of musical works is also completely reasonable, especially since *all* American songwriters are under a compulsory license and forced to accept \$.00012 cents per-stream, with relatively no sales or downloads (due to the substitution effect), and with no other form of non-performing songwriter income.

GEO also agrees and presumes with Your Honors the following, on Page 299;

“More critically, the NAB fails to provide persuasive evidence to support its proposal that statutory royalty rates should remain at the same level throughout the rate term for all types of services. That proposal contains an implicit assumption that price levels will remain the same across the music industry over the next five years. That is hardly self-evident. In the absence of persuasive evidence that prices will remain static across the entire music industry for the next...five years, the Judges will not presume that to be the case. The NAB has not presented such persuasive evidence. 356”

Most importantly, GEO prays at the bare minimum Your Honors rule *sua sponte*, or by Order from this Motion, or in your Final Determination, that just like in *Web V*, at the very least, a CPI-U inflation indexing in the *Phonorecords III* (remand) and *Phonorecords IV* is reasonable, necessary, and appropriate.

GEO respectfully files these Motions to request relief from national monetary inflation in the *Phonorecords III* (remand) and *Phonorecords IV* proceedings for Subpart B interactive subscription streaming rates by indexing them to BLS CPI-U inflation for current streaming royalty rates, future rates, and possibly a retroactive CPI-U COLA (“Cost of Living Adjustment”) from 2018 to the present — or a COLA from as far back as 2008 from *Phonorecords I*, since the streaming rate has *never* had a COLA adjustment, and it’s been almost 15 years.

While GEO has proposed inflation increases in both rate proceedings for the 9.1 cent Subpart A mechanical rates, now called “Subpart B Configurations”, GEO has never requested relief from or proposed any Subpart B subscription streaming inflation adjustments or indexing until now.

Much of the following government evidence and data is the same as the two *Notices* GEO filed on December 16, 2021 in both proceedings, but it is included here so that it is formally part of this Motion and argument.

U.S. BUREAU OF LABOR STATISTICS LAST CPI-U AT 6.8% PERCENT

The BLS press release from December 10, 2021 reads⁵:

“The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.8 percent in November on a seasonally adjusted basis after rising 0.9 percent in October, the U.S. Bureau of Labor Statistics reported today. Over the last 12 months, the all items index increased 6.8 percent before seasonal adjustment.”

and...

⁵ <https://www.bls.gov/news.release/pdf/cpi.pdf> December 10, 2021 BLS press release.

"The all items index rose 6.8 percent for the 12 months ending November, the largest 12-month increase since the period ending June 1982."

On October 13, 2021, GEO proposed a lost inflation adjustment to the frozen 9.1 cent mechanical royalty rate in my Written Direct Statement, but I also proposed a yearly CPI-U indexing to the 9.1 cent mechanical going forward, exactly as this Court determined in the most recent *Web V* rate proceeding⁶.

In February of this year, the U.S. inflation rate was between a normal 1% to 2% percent, but now it has been gradually increasing every month to 6.8% percent.

See BLS charts below:

Chart 1. One-month percent change in CPI for All Urban Consumers (CPI-U), seasonally adjusted, Nov. 2020 - Nov. 2021
Percent change

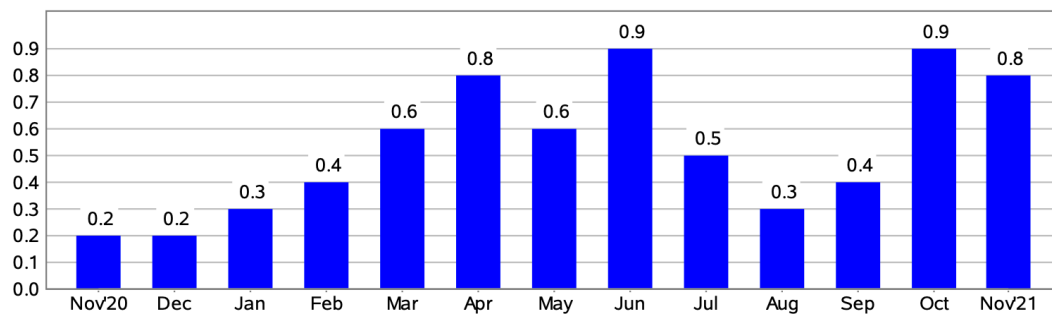
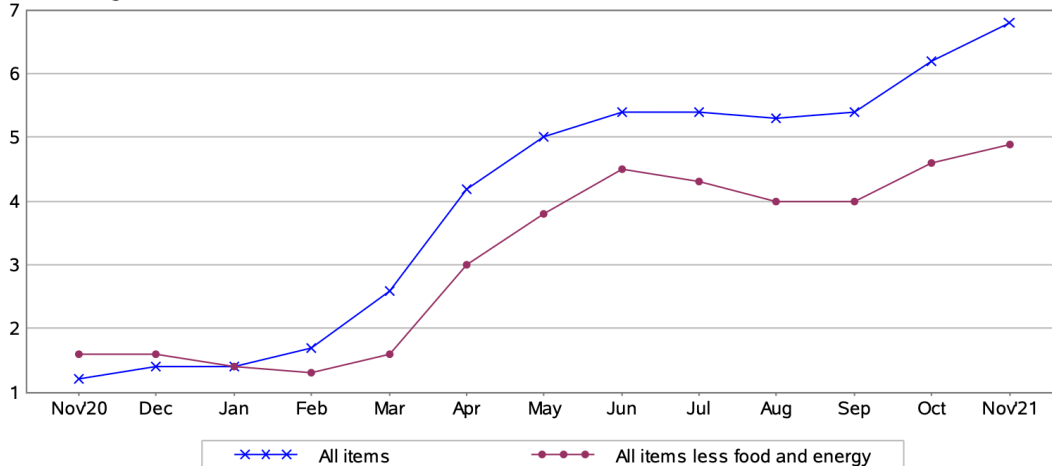


Chart 2. 12-month percent change in CPI for All Urban Consumers (CPI-U), not seasonally adjusted, Nov. 2020 - Nov. 2021
Percent change



⁶ <https://app.crb.gov/document/download/25678> *Web V* Determination, July 22, 2021. A CPI-U inflation adjustment going forward for the webcasting of §114 digital sound recordings.

GEO also files this Motion to the CRB, using government evidence, to demonstrate that national monetary inflation continues to rise at unprecedented levels, not seen since the 1970's and 1980's, and in the case of the 6.8% percent, it has been 39 years since we've had a 6.8% rate.

This 6.8% percent inflation rate negatively affects all Americans, but also *all* American songwriters and music publishers subject to the compulsory licenses and microscopic statutory streaming rates under §115 and §385 Subparts A, B and C.

The following are the most recent Cost of Living Adjustments ("COLA") or CPI-U indexing by the CRB which also demonstrates the CRB's willingness to make CPI-U inflation indexing adjustments in other rate proceedings.

GEO also argues that the following CPI-U adjustments are now rate court precedent:

1. the *Web IV*⁷ Final Determination indexing on October 27, 2021.
2. for Public Broadcasting⁸ and SESAC on November 23, 2021.
3. for Satellite Carriers⁹ a 6.2% COLA adjustment on November 26, 2021.

⁷ <https://www.govinfo.gov/content/pkg/FR-2021-10-27/pdf/2021-20621.pdf> *Web IV* inflation adjustment by CRB using CPI-U on October 27, 2021.

⁸ <https://www.govinfo.gov/content/pkg/FR-2021-11-23/pdf/2021-25443.pdf> Federal Register, November 23, 2021. Public Broadcasting and SESAC.

⁹ <https://www.govinfo.gov/content/pkg/FR-2021-11-26/pdf/2021-25719.pdf> Federal Register, November 26, 2021. Satellite Carriers 6.2% COLA adjustment

4. the Webcaster Statutory License¹⁰ COLA adjustment on December 1, 2021, indexing royalty rates for the public performance of and for the making of ephemeral reproductions of sound recordings.

We hope that the above mentioned inflation indexing by the CRB is a good sign that Your Honors will also index the *Phonorecords IV* (and possibly *Phonorecords III* (remand)) streaming rates to CPI-U inflation. GEO also prays Your Honors will index the 9.1 cent mechanical rate to CPI-U inflation as well.

Finally, just in case Your Honors are not able to index these Subpart B subscription streams *sua sponte* or by motion in the *Phonorecords III* (remand) or in *Phonorecords IV*, GEO will also include this Subpart B interactive streaming indexing proposal in my future Amended Written Direct Statement by the March 8, 2022 deadline.

CONCLUSION

Again, GEO respectfully files these Motions to request relief from national monetary inflation in the *Phonorecords III* (remand) and *Phonorecords IV* proceedings for Subpart B interactive subscription streaming rates by indexing them to BLS CPI-U inflation for current streaming royalty rates, future rates, and possibly a retroactive CPI-U COLA (“Cost of Living Adjustment”) from 2018 to the present — or a COLA from as far back as 2008 from *Phonorecords I*, since the streaming rate has *never* had a COLA adjustment, and it’s been almost 15 years.

¹⁰ <https://www.govinfo.gov/content/pkg/FR-2021-12-01/pdf/2021-26062.pdf> Federal Register, December 1, 2021. Webcaster Statutory License.

Respectfully,

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*George D. Johnson (GEO), an individual
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Thursday, January 6, 2022

Proof of Delivery

I hereby certify that on Thursday, January 06, 2022, I provided a true and correct copy of the Docket No. 21-CRB-0001-PR FINAL (2023-2027) PRS IV and PRS III - 2022-01-06 - GEORGE JOHNSON'S (GEO) MOTION TO INDEX SUBPART B INTERACTIVE STREAMING RATES TO BLS CPI-U INFLATION RATES IN BOTH PROCEEDINGS (2ND CORRECTED) to the following:

Spotify USA Inc., represented by Richard M Assmus, served via ESERVICE at rassmus@mayerbrown.com

National Music Publishers' Association (NMPA) et al, represented by Benjamin Semel, served via ESERVICE at Bsemel@pryorcashman.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Nashville Songwriters Association International, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Google LLC, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Amazon.com Services LLC, represented by Scott Angstreich, served via ESERVICE at sangstreich@kellogghansen.com

Signed: /s/ George D Johnson